

George W. Abbott  
State Bar No. 2178  
George W. Abbott, Chartered  
P. O. Box 98  
Minden, Nevada 89423  
(702) 782-2302

RECEIVED  
IN DROP BOX

NOV 25 PM 4:20

CLERK U.S. DISTRICT COURT  
DISTRICT OF NEVADA

Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

GERALD ARMSTRONG,

CV-N-97-00670 ECR (RAM)

Plaintiff,

OPPOSITION TO DEFENDANTS'  
MOTION FOR ATTORNEY FEES

vs.

DAVID MISCAVIGE, et al,

Defendants,

Plaintiff, by and through his undersigned attorney of record, for opposition to the defendants' Motion for Attorneys' Fees (#75) shows and represents the matter set out hereinafter.

This opposition is made pursuant to LR 54-16, and is made and based upon Fed.R.Civ.P. Rules 54(d)(2)(B), 54(d)(2)(E), and 11, as well as upon Plaintiff's Memorandum of Points and Authorities, annexed hereto.

Dated the 17th day of November, 1998.

George W. Abbott

1                    Plaintiff's Memorandum of Points and Authorities  
2                    In Support of Opposition to Defendants' Motion  
3                    for Fees and Expenses

4                    Plaintiff, on the summary showing set out following,  
5 shows and represents to this Court and to counsel for defendants  
6 why, in fact and in law, the defendants' Motion for Attorneys'  
7 Fees (#75)—redescribed, or amended, in defendants' supporting  
8 papers as a "Motion for An Award of Counsel Fees and Expenses"  
9 (Def. 9/28/98 P and A document name, page 1:24)—should and ought  
10 to be denied with prejudice.

11                    I. SUMMARY OF OPPOSITION BASES

12                    a. Nature of defendants' motion

13                    1. Defendants here aver (Def.P and A, page 2:7-) that:

14                    . . . RTC and CSI now move for an award of  
15 counsel fees and expenses incurred on and after  
16 June 9, 1998 to be taxed against Armstrong and his  
17 counsel, jointly and severally pursuant to 28 U.S.C.  
18 § 1927 and the inherent powers of this Court.

19                    2. The cited statutory provision, § 1927, reads:

20                    Any attorney or other person admitted to conduct  
21 cases in any court of the United States or any  
22 Territory thereof who so multiplies the proceedings  
23 in any case as to increase costs unreasonably and  
24 vexatiously may be required by the court to satisfy  
25 personally such excess costs.

26                    3. From the foregoing it is clear that defendants RTC  
27 and CSI have, within the reach of the language of Fed.R.Civ.P.  
28 Rule 54(d)(2)(E) (under the heading "Attorneys' fees") set out  
"claims for fees and expenses as sanctions" reciting that "The  
provisions of subparagraphs (A) through (D) do not apply to claims  
for fees and expenses as sanctions for violations of these rules



1 or under 28 U.S.C. § 1927 (emphasis supplied)." Plaintiff  
2 turns then to Nevada's local rules.

3 b. Controlling Nevada procedural rules

4 4. Controlling procedural rules applicable to motions for  
5 attorney fees the District of Nevada are found in LR 54-16, full  
6 text hereinbelow. (Emphasis, infra, added by undersigned counsel).

7 LR 54-16. MOTIONS FOR ATTORNEY'S FEES.

8 (a) Time for Filing. When a party is entitled to  
9 move for attorney's fees, such motion shall be filed  
10 with the court and served within fourteen (14) days  
after entry of the final judgment or other order  
disposing of the action

11 (b) Content of Motions. Unless otherwise ordered by  
12 the court, a motion for attorney's fees must, in  
13 addition to those matters required by Fed.R.Civ.P.  
54(d)(2)(B), include the following:

14 (1) A reasonable itemization and description of the  
work performed;

15 (2) An itemization of all costs sought to be  
16 charged as part of the fee award and not otherwise  
taxable pursuant to LR 54-1 through 54-15;

17 (3) A brief summary of:

18 (A) The nature of the case;

19 (B) The difficulty of the case;

20 (C) The results obtained and the amount involved;

21 (D) The time and labor required;

22 (E) The novelty and difficulty of the questions  
23 involved.

24 (F) The skill requisite to perform the legal  
service properly;

25 (G) The preclusion of other employment by the  
26 attorney due to acceptance of the case;

27 (H) The customary fee.

- 1 (I) Whether the fee is fixed or contingent;  
2  
3 (J) The time limitations imposed by the client or  
4 the circumstances;  
5 (K) The experience, reputation, and ability of the  
6 attorney(s);  
7 (L) The undesirability of the case, if any;  
8 (M) The nature and length of the professional  
9 relationship with the client;  
10 (N) Awards in similar cases; and  
11 (4) Such other information as the court may direct.

12 c. Defendants whole failure to comply

13 5. That defendants wholly failed to comply with the clear  
14 and unmistakably mandatory nature of the cited Nevada Federal  
15 District rule is manifest. That defendants did not take the  
16 trouble to even excuse total non-compliance is reflected in this  
17 part-item happening (Def. 9/28/98 P & A, at page 3:13--15, and  
18 footnote 2, page 3), defendants reciting that ". . .Accordingly  
19 (to add to basic fee claims fees and costs incurred in litigating  
20 right to fee award) RTC and CSI respectfully request that they be  
21 allowed ten (10) business days after notice of granting of this  
22 motion to submit affidavits and supporting materials to quantify  
23 the amount of the fees to be awarded to them."

24 6. Defendants, to mask a request for additional time  
25 totally to defer clear rule compliance, have seized upon a  
26 somewhat smoky footnote route.



1 d. Supporting authority to deny defendants' motion

2 7. Faced with an appeal from a not dissimilar fact history,  
3 The Ninth Circuit Court has upheld the decision of the United  
4 States Court for the District of Idaho. As characterized in  
5 West's Federal Civil Rules Handbook (1997) at page 581 the  
6 rational of the requirement that the motion must be filed within  
7 14 days after entry of judgment is this:

8 ...The deadline helps both to ensure that the opponent  
9 receives proper notice of the fees claim and to promote  
10 a prompt fees ruling from the district court, thus  
11 permitting simultaneous appellate review of both the  
12 merits and the fees award. Failure to file within this  
13 allotted time constitutes a waiver of a party's right to  
14 recover such fees or expenses.

12 See Committee for Idaho's High Desert, Inc. v. Yost, 92 F3d 814,  
13 824-826(9th Cir. 1996), and see related cases.

14 II. CONCLUSION

15 8. On the foregoing, the subject motion of RTC-CSI should  
16 and ought to be denied, with prejudice to its renewal.

17 Dated this 17th and 25th<sup>1</sup> day of November, 1998.

18   
19 George W. Abbott  
20

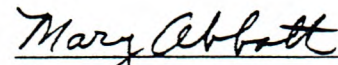
21  
22  
23  
24  
25 While plaintiff supra made reference to NRCP Rule 11, a motion  
26 of plaintiff to claim multiple egregious violations by RTC-CSI  
27 in these and other motion papers plaintiff--on discoveries made  
28 as recently as November 24 has elected to defer a Rule 11  
counter motion at this time.

Certificate of Service by Mail

I certify that I am an employee of George W. Abbott, and that on this date I deposited for mailing at Minden, Nevada, a true copy of the within Motion addressed to

N. Patrick Flanagan, Esq.  
Hale Lane Peek Dennison Howard and Anderson  
P. O. Box 3237  
Reno, Nevada 89505

Dated this 25th day of November, 1998.

  
\_\_\_\_\_  
Mary Abbott